IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT 324 OF NO. 2004

IN

SUMMARY SUIT NO. 5698 OF 1999

Canara Bank .. Plaintiff

versus

Niji Traders .. Defendant

...

Mr.R.C. Dubey i/b S. Kanchan for the plaintiff.

Mr.Tushar Bhavsar i/b Manoj Bhatt for the defendant.

CORAM : D.G. KARNIK,J.

DATED : 21st March 2005.

P.C.:

1. Heard the learned counsel for the parties.

2. This Summons for Judgement is taken out by the plaintiff in a suit filed for recovery of money due under a bill of exchange. At the hearing of Summons

for Judgement, the learned counsel for the plaintiff hands in original documents. The documents are taken on recorded and collectively marked Exhibit "A".

3. Few facts necessary for the hearing of the Summons for Judgement are stated below.

4. One M/s.Jai Niketan Textiles sold supplied and delivered to the defendant certain goods. M/s.Jai Niketan drew two bills of exchange on the defendant for the value of the goods. The bills were payable to the plaintiff bank. The defendant accepted the two bills of exchanges drawn by the supplier for the value of the goods and signed the bills of exchanges in token of the acceptance. On due date, the defendant failed and neglected to make the payment. The plaintiff therefore noted and protested two bills of exchange. The original bills of exchange, invoice as well as the noting protesting by the notary is filed on record. The plaintiff sues the defendant on the two bills of exchanges as an acceptor.

5. The defendant has raised three defences which are considered below:

6. The learned counsel firstly submits that the suit is barred by limitation. The bills of exchanges are drawn on 31st March 1996 and are payable 75 days after sight. The bills were therefore payable on 14th February 1996. The suit has been filed on 4th November 1999 i.e. within a period of three years from the due dates and is therefore within limitation.

7. Secondly, the learned counsel for the defendant submits that the plaintiff has already filed a suit against the drawer of the bill of exchange and hence, the present suit is not maintainable. The primary liability for payment under the bill of exchange is that of an acceptor. The drawer is liable as a guarantor u/s.37 of the Negotiable Instruments Act. Therefore, there can be no bar for filing of a separate suit against the drawer and acceptor.

8. Learned counsel lastly submits that the goods supplied were of inferior quality and therefore, the defendant is not liable to pay. This defence is not available qua the plaintiff bank which is the payee and holder in due course. Thus, none of the defences

raised by the defendant gives rise to any triable issue. The defences are sham and moonshine. In the circumstances, I pass the following order:

9. Summons for Judgement is made absolute and the suit of the plaintiff is decreed as follows:-

10. The defendant shall pay to the plaintiff a sum of Rs.3,69,801/- together with interest on the principal sum of Rs.2,49,015/- at 16.5% p.a. from the date of the suit till payment and all costs of the suit. It is further ordered that in the event the plaintiff recovers this amount from the drawer of the bill of exchange i.e.M/s.Jai Niketan, the plaintiff shall not be entitled to recovery the same from the defendant again.

D.G. KARNIK, J